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**Natural Resources, Ecology &  
Parks Committee**

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**HB 2901**

**Brief Description:** Changing provisions relating to the clean up of properties contaminated by manufactured illegal drugs.

**Sponsors:** Representatives Morrell, Green, Campbell, Roberts, Wallace, Ericks, Lantz, Kilmer, Blake, Grant, Hudgins, Darneille, McDonald, Linville, McCune and Ormsby.

**Brief Summary of Bill**

- Allows a court to issue a local health officer a warrant so that property suspected of methamphetamine contamination can be searched and seized.
- Permits a local health officer to issue an emergency order forbidding occupancy of a contaminated property.
- Establishes new requirements for the owners of contaminated properties.
- Provides new conditions under which a contractor for the decontamination of property may have his or her certification suspended.
- Creates a new account and grant program for landlords with methamphetamine contamination on their property.
- Exempts local governments that obtain title to property through a voluntary conveyance from the responsibilities of the Model Toxics Control Act.

**Hearing Date:** 1/27/06

**Staff:** Jason Callahan (786-7117).

**Background:**

There is a chapter of state law that describes how properties that have been contaminated by the manufacture or use of illegal drugs must be handled (Chapter RCW 64.44). The provisions involve reporting of the contaminated property, notice of the property being unfit for use, decontamination requirements, and contractor certification.

Reporting and notice of a contaminated property (RCW 64.44.020)

A law enforcement officer that discovers a property that has been contaminated to the point where it is unfit for human habitation must notify the local health officer. The local health officer must then post a written notice on the property and conduct an inspection of the property within 14 days. Notice of contamination can also be submitted by the property's owner or be discovered by the local health officer directly. If the local health officer suspects a property is contaminated, the officer may enter and inspect the property.

#### Determining a property unfit for use (RCW 64.44.030)

The local health officer may determine if a property is unfit for use due to chemical contamination. If this determination is made, the local health officer must prohibit use of the property. Notice of this prohibition must be delivered to the property's owner and posted on the actual property itself. The property owner may request a hearing to dispute the finding that the property is unfit. In the hearing, the property owner has the burden of showing that the property is not contaminated or has already been cleaned to an acceptable level.

#### Actions upon finding of contamination (RCW 64.44.040 & 64.44.050)

Cities and counties have the option of condemning or demolishing contaminated properties. The local government must wait until all hearings have been exhausted before a demolition can occur. Alternatively, the owner of the property can pay to have the property decontaminated. If the owner chooses this course, then he or she must hire a contractor certified by the Department of Health (Department). The contractor must present a decontamination plan to the local health officer, and upon its successful execution, the unfit for use determination may be lifted. The local health officer may charge the property owner fees for reviewing the plan and reinspecting the property.

#### Contractor certification (RCW 64.44.060)

A property owner may only hire a contractor for decontamination work if the contractor has been approved by the Department. The Department maintains performance standards and standards for training and testing contractors to ensure that they are capable of dealing with the contamination left behind from illegal drug manufacturing. Contractors can lose their certification if they violate certain standards set by the Department.

#### Model Toxics Control Act (RCW Chapter 70.105D)

The Model Toxics Control Act assigns joint and several financial responsibility to all current and previous owners or operators of a contaminated property. The definition of "owner or operator" is fairly broad; however, there are a few exceptions. Units of the state or a local government are exempted from the definition if ownership was conveyed through a drug forfeiture action or involuntarily through bankruptcy, tax delinquency, or abandonment.

### **Summary of Bill:**

#### Definitions (section 1)

Two definitions are expanded. The definition of "hazardous chemical" is expanded to include the final product of drug manufacturing, and not just the precursor elements needed to manufacture illegal drugs. In addition, the definition of "property" is expanded to include personal property (in addition to real property), as well as motels, hotels, and storage sheds.

### Reporting and notice of a contaminated property (section 2)

A local health officer may, if access to a property suspected of being contaminated is denied, receive a warrant to conduct an administrative inspection and seizure of the property. The warrant may be issued by a superior, district, or municipal court which has cause to believe that the property is contaminated.

### Determining a property unfit for use (section 3)

Local health officers may issue emergency orders that a property is unfit for use if immediate action is necessary to protect public health, safety, or the environment. The owner of a property that is the subject of an emergency order is required to comply immediately. Emergency orders may remain in place for up to 72 hours. If the local health officer believes the property is still unfit for use after this time, the non-emergency procedures for declaring a property unfit for use must be followed.

### Actions upon finding of contamination (sections 4 & 5)

The local city and county authority is expanded beyond condemning or demolishing the property. The local government can also prohibit use of the property, remove personal property, or act to decontaminate the property. Demolition and condemnation must still wait until after all appeals have been heard, but prohibition of use can occur immediately. Any person violating an order to not enter a contaminated property may be prosecuted for a misdemeanor.

The property owner is permitted to contract for more than just the decontamination of the property. The owner may also contract for the property to be demolished. Demolition, like decontamination, must still be done by a certified contractor.

The local health officer may establish a time line for the decontamination or demolition of the property. If the deadline is not met, the local jurisdiction may assess a fine or institute other actions against the property owner. In addition, the local health officer must seek reimbursement from the property owner for the costs of property testing, all costs of decontamination, and all costs incurred by the local health officer as a result of enforcing the decontamination law.

### Contractor certification (sections 6, 7, & 8)

The training and testing requirements that decontamination contractors must satisfy are expanded to include the workers of contractors. In addition, the Department is given the authority to place restrictions on the certification of contractors, instead of only being able to suspend or revoke a certification.

The list of infractions that may result in the conditioning or revoking of a contractor's certification are expanded to include failure to properly dispose of contaminated property, committing fraud or misrepresentation, failure to cooperate with the local health officer, failing ongoing evaluations and inspections, and being convicted of a gross misdemeanor or felony.

The Department is given the authority to annually evaluate a sample of decontamination projects performed by certified contractors to determine the adequacy of the work. The evaluations must be done by independent contractors or a state or local agency. The State Board of Health is required to adopt rules for the independent third party sampling of decontaminated property to determine the property's fitness for use. If a contractor's decontamination work does not satisfy the

third party inspection, the contractor may be subject to a license suspension and other civil penalties.

New account (Section 9)

The Methamphetamine Contamination Cleanup Account is created as an appropriated account. The account may be used for the cleanup of residential rental properties that have been contaminated by methamphetamine production. Funding in the account flows through the Department, which makes grants to landlords who had no knowledge of the methamphetamine activity on their property.

Model Toxics Control Act (section 10)

State and local agencies will not become liable under the Model Toxics Control Act if the agency obtained title to the contaminated property through a voluntary conveyance for the purposes of remediating the property for a public purpose.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/16/06.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.